

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WESTERN NATIONAL MUTUAL
INSURANCE COMPANY, a foreign Insurer,

Plaintiff,

v.

STRICKLAND & SONS EXCAVATION LLC,
a Washington limited liability company;
INDOOR COMFORT SYSTEMS, INC., a
Washington corporation; CEDAR SPRINGS
ASSOCIATES, a Washington limited liability
company; FENIX EARTHWORKS LLC, a
Washington limited liability company; PEASE &
SONS, INC., a Washington corporation; and
CENTRAL PIERCE FIRE & RESCUE a/k/a
PIERCE COUNTY FIRE DISTRICT NO. 6, a
Washington Municipal Corporation,

Defendants.

No. 3:21-cv-05211-BJR

**ORDER GRANTING MOTION TO
STAY**

This matter comes before the Court on a Motion to Stay filed by Defendant Central Pierce Fire and Rescue (“CPFR”), joined by Defendants Strickland & Sons Excavation LLC (“Strickland”) and Fenix Earthworks LLC (“Fenix,” collectively, “Defendants”). Plaintiff Western National Mutual Insurance Company (“Western National” or “Plaintiff”) opposes the motion. Having reviewed the briefs filed in support of and opposition to the motion and the remainder of the record, the Court finds and rules as follows.

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1 In this lawsuit, Western National seeks a declaration that it is not liable for either the
2 defense or indemnity of Strickland and Fenix, its insureds under several comprehensive general
3 liability and umbrella policies; or the defense or indemnity of CPFR, which claims to be an
4 “additional insured” under those policies. The coverage dispute arises out of a lawsuit pending in
5 Washington state court, *Strickland & Sons Excavation, LLC v. Indoor Comfort Systems, Inc.*,
6 Pierce County Superior Court Case No. 19-2-11546-2 (the “underlying lawsuit”). The underlying
7 lawsuit concerns Strickland’s claims against Indoor Comfort Systems, Inc. (“ICS”) and Cedar
8 Springs Associates, for nonpayment for work Strickland performed on property owned by Cedar
9 Springs. ICS and Cedar Springs counterclaimed against Strickland, and also initiated claims
10 against CPFR, Fenix, and Pease & Sons, Inc.¹ That lawsuit is ongoing, with trial scheduled to
11 begin in January, 2023. Plaintiff is currently paying the costs of Defendants’ defense, subject to a
12 reservation of rights to deny coverage and to seek reimbursement. In particular, the Western
13 National policies at issue provide that “[i]f we initially defend an insured . . . but later determine
14 that none of the claims . . . for which we provided a defense . . . are covered under this insurance,
15 we have the right to reimbursement for the defense costs we have incurred.” Ex. A to Decl. of
16 Todd Hayes at 5-6 (Western National reservation of rights letter citing reimbursement clause in
17 policy endorsement).

18 On June 3, 2022, CPFR filed the instant Motion to Stay, seeking a blanket stay of this
19 matter pending resolution of the underlying lawsuit. Western National opposes the motion,
20 arguing that a blanket stay is unnecessary and inappropriate in this case. On June 10, 2022,

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22 ¹ Pease & Sons, also a defendant in this lawsuit, claimed to be an “additional insured” on the Western National
23 policies, but on June 17, 2022, Western National and Pease filed a “Notice of Partial Agreement” signifying that
these two parties had resolved their dispute and intended to file a joint motion for an order of dismissal “within
seven days.” However, no order of dismissal has yet been requested or entered.

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Western National filed a Motion for Partial Summary Judgment, seeking a declaration that it is not liable for the defense of Defendants in the underlying lawsuit. CPFR, Strickland, and Fenix have all filed oppositions to that motion, which is currently pending.

The Court has “unique and substantial discretion” to stay a declaratory judgment proceeding before it. *See Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995); *see also Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936). “When considering a motion to stay, the court weighs a series of competing interests: (1) the possible damage that may result from the granting of the stay; (2) the hardship or inequity which a party may suffer in being required to go forward; and (3) the orderly course of justice measured in terms of the simplification or complication of issues, proof, and questions of law that could be expected to result from a stay.” *Fed. Ins. Co. v. Holmes Weddle & Barcott PC*, No. C13-0926, 2014 WL 358419, at *3 (W.D. Wash. Jan. 31, 2014) (citing *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962)). The Ninth Circuit has “caution[ed] that ‘if there is even a fair possibility that the stay ... will work damage to some one else,’ the party seeking the stay ‘must make out a clear case of hardship or inequity.’” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1112 (9th Cir. 2005) (quoting *Landis*, 299 U.S. at 255).

Here, Western National has failed to articulate a “fair possibility” that a stay could “work damage” to it. A stay will not, as Western National avers, “prevent[] Western National from obtaining a ruling on its duty to defend.” Pl.’s Opp. at 2. It will only delay by mere months a ruling on that question, until all of the outstanding issues in the underlying litigation are resolved. Western National has not articulated any harm that it will endure—particularly in the anticipated few months a stay would be in place—that reimbursement will not cure. As this Court has found under similar circumstances, the existence of a reimbursement clause, like the one found in the

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1 policies here, “lessens the likelihood that Insurers will be damaged by a stay.” *West American Ins.*
2 *Co. v. Constr. Loan Servs. II*, 2:20-cv-01092-BJR, 2020 WL 6747958, at *2 (W.D. Wash. Oct 6,
3 2020). And, although Western National complains it is being “forced to rely on the ability of
4 defendants to pay out of pocket” if it is later determined it is entitled to reimbursement, this is the
5 unextraordinary proposition it bargained for in its policies.

6 Defendants, on the other hand, have outlined the potential prejudice they could suffer if
7 forced to continue litigating this action while the underlying lawsuit proceeds, including being
8 required to take potentially conflicting positions. While the exact legal and factual issues in the
9 two cases may not be identical, even the fear of taking a position that might later be given
10 preclusive effect could hamstring Defendants’ strategy in the underlying lawsuit. *See Leyva v.*
11 *Certified Grocers of California, Ltd.*, 593 F.2d 857, 863–64 (9th Cir. 1979) (holding the court's
12 ability to enter a stay “does not require that the issues in such proceedings are necessarily
13 controlling of the action before the court”). And, at the very least, Defendants would be in the
14 position of having to wage a “two-front war,” a situation that is easily mitigated by a brief stay of
15 this matter.

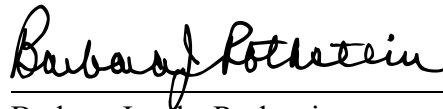
16 Finally, a stay would eliminate the inefficiency—to the parties and the Court—of
17 proceeding in this coverage dispute while the facts and law continue to unfold in the underlying
18 lawsuit. *See Western Am. Ins. Co.*, 2020 WL 6747958, at *3 (citing *Leyva*, 593 F.2d at 863–64)
19 (“A trial court may, with propriety, find it is efficient for its own docket and the fairest course for
20 the parties to enter a stay of an action before it, pending resolution of independent proceedings
21 which bear upon the case ... In such cases, the court may order a stay of the action pursuant to its
22 power to control its docket and calendar and to provide for a just determination of the cases
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1 pending before it.”). Once the underlying lawsuit has resolved, the parties may return to this
2 Court with a settled record and obtain whatever ruling at that point is appropriate.

3 Therefore, the Court hereby GRANTS Defendants’ Motion to Stay. At the conclusion of
4 the underlying lawsuit, the parties shall, within 14 days of such event, meet and confer and file a
5 Joint Status Report outlining what issues, if any, remain before this Court.

6 DATED this 1st day of September, 2022.

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9 Barbara Jacobs Rothstein
10 U.S. District Court Judge
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